

6 THE PATENT SYSTEM

The U.S. patent system is a public/private partnership.¹ As discussed in Chapter 1, a public/private partnership is an innovation-related relationship that involves public and/or private resources. The patent system involves both public and private resources in its maintenance.

In terms of the taxonomy used to characterize public/private partnerships, the patent system, promulgated through the Patent Act of 1790, is an example of indirect governmental involvement, because the system is in place and it provides an innovative environment in which firms can optimize, and the economic objective of the patent system is to leverage private R&D. See Table 6.1. The patent system is in the cell corresponding to indirect governmental involvement with an economic objective to leverage private R&D.

In subsequent chapters, various public/private partnerships will be placed in the taxonomy described by Table 6.1.

HISTORY OF THE U.S. PATENT SYSTEM

The history of the U.S. patent system dates to the authority given to Congress in the Constitution of the United States. Article I, section 8 states:

Congress shall have power ... to promote the progress of science and useful arts, by securing for limited times to

¹ This chapter is based on Link (1999b). Link (1999b) was later expanded in Audretsch et al. (2002a) and then reproduced in book form as Feldman, Link, and Siegel (2002).

authors and inventors the exclusive right to their respective writings and discoveries.

Based on this authority, Congress initiated a number of patent laws beginning in 1790 with the Patent Act.² The version of law that is now in effect was enacted on July 19, 1952 (to be effective January 1, 1953).

Table 6.1. Taxonomy of Public/Private Partnerships

Economic Objective		
<i>Governmental Involvement</i>	<i>Leverage Public R&D</i>	<i>Leverage Private R&D</i>
Indirect		Patent system (Patent Act)
Direct		
Financial Resources		
Infrastructural Resources		
Research Resources		

The Patent and Trademark Office issues patents for inventions. The patent term is 20 years, and it grants exclusive property rights to the inventor over that period of time. Patents are effective only within the United States and its territories and possessions.

U.S. patent law is clear about what can be patented. Any person who:

... invents or discovers any new or useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent.

It is important to note the word “useful,” recalling that Franklin created the American Philosophical Society of Philadelphia in 1742 to promote “useful knowledge.”

² The Patent Act of 1790 was influenced by President Thomas Jefferson, among others. The concepts therein trace to English law where, as precedence, in 1449, King Henry VI awarded a patent to John of Utynam for stained glass manufacturing. A readable overview of the history of the U.S. Patent Office is in Watson (2001).